



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Sunoco, Inc. (R&M) (4-UC-413; 347 NLRB No. 38) Philadelphia, PA June 16, 2006. The Board reversed the Regional Director's Decision and Order dismissing the Employer-Petitioner's unit clarification petition as untimely, reinstated the petition as timely filed, and remanded the proceeding to the Regional Director for further appropriate action. [\[HTML\]](#) [\[PDF\]](#)

For a number of years, the Atlantic Independent Union has represented a bargaining unit comprised of three different job classifications: terminal operators, drivers, and mechanics. In February 2002, Sunoco restructured its operations by transferring its assets relating to pipeline and terminal operations from the Employer to a newly-created limited partnership called Sunoco Logistics Partners, LP (Logistics) and concurrently created Sunoco Partners, LLC (Partners), another subsidiary, to serve as a general partner of Logistics.

Following the restructuring, bargaining unit terminal operators were transferred from the Employer's payroll to that of Partners and the drivers and mechanics remained on the Employer's payroll. During an October 2003 bargaining session, the Employer and Partners proposed splitting the bargaining unit into two separate units. The Union rejected this proposal. By February 5, 2004, the parties had agreed on all contractual matters except for the unit scope. On or before April 1, representatives of the Employer withdrew the proposal for separate units to permit the parties to reach a contract agreement, while expressly communicating to the Union the Employer's intent to file a unit clarification petition. The contract was ratified by the Union's membership on May 17.

Subsequent negotiations between the parties were unsuccessful and the Employer filed its unit clarification petition on January 19, 2005. At the opening of the hearing the Regional Director denied the Union's argument that the Employer's petition should be dismissed as untimely. However, at the conclusion of the hearing, the Regional Director granted the Union's motion to dismiss the petition.

In its request for review, the Employer contended that the Regional Director erred in measuring the timeliness of the petition from the date on which the employees ratified the collective-bargaining agreement, rather than using as a benchmark the date of the contract's execution. The Employer further contended that the Regional Director's finding that the Employer failed to file its petition "shortly after" ratification of the contract runs contrary to the Board's policy of encouraging voluntary resolution between parties.

The Board found that in the context of this case, the gap between contract ratification and the start of negotiations was not so long as to go beyond the Board's "shortly after" requirements and render the petition untimely. It noted that its discussion is limited to the question that is currently before the Board on review: whether the unit clarification petition was timely filed.

(Chairman Battista and Members Schaumber and Walsh participated.)

Supervalu, Inc. (26-CA-21274; 347 NLRB No. 37) Indianola, MS June 13, 2006. The Board adopted the administrative law judge's finding that the Respondent did not violate Section 8(a)(1) of the Act by refusing to reinstate 33 of 36 strikers who walked off the job in protest of the Respondent's implementation of a production and tracking system and other economic issues. Contrary to the judge, it found that the Respondent violated Section 8(a)(1) by refusing to reinstate part-time employees Leslie Hall, Melvin Norris, and Reggie Crawford because they had not been permanently replaced when they made unconditional offers to return to work. [\[HTML\]](#) [\[PDF\]](#)

The judge determined that the Respondent did not unlawfully refuse to reinstate 36 strikers because it had permanently replaced all of them before any striker made any unconditional offer to return to work. Six of the strikers made unconditional offers to return to work while the Respondent was still in the process of hiring permanent replacements.

The Board noted that when three of the strikers, full-time employees Will Hampton, Steve Lyons, and Elvis Lyons made unconditional offers, they had been permanently replaced as full-time employees and they declined part-time employment. However, it found that there were still about 39 open part-time positions for which the Respondent had not yet hired permanent replacements when Hall, Norris, and Crawford made unconditional offers to return to work. Therefore, the Board found that the Respondent's refusal to hire them upon their unconditional offers to return to work violated Section 8(a)(1).

Member Schaumber would not order a remedy for Hall, Norris, or Crawford. He reasoned that, even assuming that they had not been permanently replaced by the time that they unconditionally offered to return to work, any technical violation was isolated and de minimis, and was cured the next morning.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Irish Johnson, an Individual; complaint alleged violation of Section 8(a)(1). Hearing at Greenville, March 10-12 and 31 and April 1-2, 2003. Adm. Law Judge Margaret G. Brakebusch issued her decision May 28, 2004.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Basin Asphalt Co., Inc. (Teamsters Local 690) East Wenatchee, WA June 12, 2006. 19-CA-29850; JD(SF)-29-06, Judge William L. Schmidt.

Grenada Stamping and Assembly, Inc. formerly known as Grenada Manufacturing Acquisition Corp. and Grenada Manufacturing, LLC (Steel, Paper and Forestry Workers [Steel Workers]) Grenada, MS June 12, 2006. 26-CA-22031, et al.; JD(ATL)-23-06, Judge John H. West.

Elbrus Transportation, Inc. (an Individual) Brooklyn, NY June 13, 2006. 29-CA-27343; JD(NY)-27-06, Judge Steven Davis.

Shepard Exposition Services, Inc. (Theatrical Stage Employees) Charlotte, NC June 13, 2006. 11-CA-20858, 20859; JD(ATL)-25-06, Judge Margaret G. Brakebusch.

Wangs Alliance Corp. (an Individual) Garden City, NY June 13, 2006. 29-CA-27027; JD(NY)-26-06, Judge Mindy E. Landow.

Moore College of Art and Design (Moore Federation of Teachers Local 2208, AFT) Philadelphia, PA June 14, 2006. 4-CA-34292; JD-43-06, Judge Robert A. Giannasi.

National Grid USA Service Co., Inc. (Utility Workers Locals 310, 317, 322, 329, 330 and 654) Westboro, MA June 14, 2006. 1-CA-42703; JD-42-06, Judge Eric M. Fine.

M. Mogul Enterprises, Inc. d/b/a MSK Cargo/King Express (Teamsters Local 657) Harlingen, TX June 16, 2006. 16-CA-24374; JD(ATL)-12-06, Judge Lawrence W. Cullen.

**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

*(In the following cases, the Board adopted Reports of
Regional Directors or Hearing Officers in the absence of exceptions)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

Fire and Life Safety Systems, Inc. d/b/a Fire Protection Retrofit Specialists, San Francisco, CA, 32-RC-5419, June 12, 2006 (Chairman Battista and Members Liebman and Walsh)

*(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)*

Computer Sciences Raytheon, Patrick Air Force Base, FL, 12-RC-9191, June 15, 2006
(Chairman Battista and Members Liebman and Walsh)

Durham School Services, L.P., Everett, WA, 19-RC-14842, June 15, 2006 (Chairman Battista
and
Members Liebman and Walsh)

Glenview Senior Living Center, LLC, Mineral Ridge, OH, 8-RC-16806, June 15 2006,
(Chairman Battista and Members Liebman and Walsh)

Hope Community, Inc., New York, NY, 2-RC-13016, June 15, 2006 (Chairman Battista and Members Liebman and Walsh)

Detroit East, Inc., Detroit, MI, 7-RD-3494, June 15, 2006 (Chairman Battista and Members Liebman and Walsh)
